IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.10 OF 1983

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. C.K. Patel, advocate for the petitioner.
Mr. K.C. Shah, advocate for the respondent.

CORAM: Y.B. BHATT J.
Date of Decision: 08-01-1996

JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act (hereinafter referred to as 'the said Act') filed by the original defendant-tenant, wherein the opponent is the original plaintiff-landlord.

2. The landlord had filed a suit for eviction against the tenant on the ground of arrears of rent for more than six

months. The trial court, after appreciation of evidence on record, dismissed the suit of the landlord by recording findings of fact that the suit notice was illegal, that the landlord had failed to prove that the defendant was a monthly tenant in respect of the suit premises and the rent thereof was Rs.30/- per month, and that the landlord failed to prove the rent note executed by the defendant-tenant in her favour (Exh.23).

3. The landlord, being aggrieved by the dismissal of the suit, preferred an appeal under section 29(1) of the said Act, which was allowed by the lower appellate court, by reversing the findings recorded by the trial court.

3. This revision by the original defendant challenges the decree of eviction passed against him by the lower appellate court.

4. In the first instance it must be noted that this is a revision under section 29(2) of the said Act, and as per the principles laid down by the Supreme court in the case of Helper Girdharbhai (AIR 1987 SC 1782), it is not open to this court to casually or lightly disturb the findings of fact recorded by the appellate court merely because another view based on such appreciation of evidence may just be possible. Very sound reasons must exist before this court can interfere with the decision of the lower appellate court viz. that such appreciation is grossly perverse and/or the conclusions drawn by the lower appellate court are such which could not have been drawn by any reasonable and prudent person.

5. On a total consideration of the treatment given by the lower appellate court to the evidence on record, I am satisfied that none of the aforesaid conditions for interference exists in the present case. I shall therefore, only briefly deal with the contentions raised in the present revision, in the light of the findings recorded by the lower appellate court.

6. The first contention raised is as regards an erroneous observation made by the lower appellate court to the effect that so far as the suit notice is concerned, the trial court had held it to be legal. No doubt, this observation made by the lower appellate court, if it is read simply as it stands in its normal grammatical sense, may not be factually correct. In fact the trial court, while dealing with the legality of the notice, vide issue no.5, has held that the suit notice is illegal and hence "the suit becomes ineffective. However, what is to be noted in the context of the observation made by the lower appellate court is that the finding recorded by the trial court on this issue is in itself clearly erroneous and

is based on a gross misreading of the documentary evidence on record.

6.1 Firstly the suit notice at Exh.24 issued by the plaintiff-landlord to the defendant-tenant, is admitted to have been received by the tenant. The tenant has merely challenged its validity, mainly on the ground that he is not a tenant at all, but he was the owner of the suit premises which belong to his Hindu Undivided Family. Thus, the trial court appears to have misconstrued the pleadings of the defendant.

6.2 Even otherwise the factual observations made by the trial court in this context are also totally erroneous and dehors the plain contents of the documents on record.

7. The first observation of the trial court that the suit notice was issued to the defendant without determining him to be a tenant of the suit house, is an observation quite contrary to the suit notice Exh.24 dated 28th June 1978 and the Rent Note Exh.23. On a collective reading of these two documents it becomes plain that the defendant was a monthly tenant in respect of the suit premises, the month of tenancy commencing from the 3rd day of English calendar month and ending on the 2nd day of the next month, at the rate of Rs.30/- per month. The suit notice at Exh.24 further goes on to assert that since the tenant had not paid any rent with effect from 3rd June 1975 (and was therefore in arrears of rent for 36 months) his tenancy is, therefore, terminated and possession is demanded on 2nd August 1978, or on the expiry of 15 days after the month of tenancy next commencing after the date of receipt of the said notice. Clearly the said recitals in the said notice are in consonance with the law and do not constitute in any manner a breach of section 12(2) of the said Act.

8. Obviously the trial court was in error in assuming that since the rent note Exh.23 was executed on 15th July 1974, and the tenure of the tenancy by virtue of the rent note expired on 14th July 1975, it must necessarily follow that the month of tenancy commenced from 15th of every English Calendar month. This is clearly an erroneous assumption, which also goes specifically contrary to the recitals in the rent note Exh.23. The said rent note specifically stipulates the month of tenancy to commence from the third day of every English Calendar month, ending on the second day of the following month. Thus, there was no warrant for the trial court to observe that "there is nothing in the testimony of the plaintiff that the month of tenancy of the suit house was allowed to be altered. There is also no explanation by her as to how it came to be altered from 15th to 3rd of each month".

8.1 Thus, on a completely erroneous and unjustified assumption that since the rent note was executed on the 15th July 1974, the month of tenancy must necessarily begin from the 15th of the month, the trial court consequently was mislead into concluding that the termination of tenancy, and demand of possession on 2nd August 1978, and demand of rent from 3rd June 1975 to 2nd June 1978, was illegal.

8.2 Thus, the lower appellate court was ultimately correct and justified in observing that the suit notice is legal.

9. The lower appellate court has even otherwise given good reasons for holding that the defendant was a tenant on a monthly basis, at the rate of Rs.30/- per month. This finding is based on an interpretation of the rent note at Exh.23.

10. Firstly the plaintiff in her oral deposition at Exh.21 asserts that she is the owner of the suit premises. Moreover, the defendant himself admits that she had executed one document of repurchase in respect of the suit property. Under the circumstances when the sale deed in favour of the plaintiff has been proved on the record of the case, it establishes the title of the plaintiff. When this is seen in the context of the rent note at Exh.23, it cannot be disputed that the defendant is a monthly tenant in respect of the suit premises.

11. The lower appellate court has also criticised the deposition as also the attitude of the defendant, and has held him to be a liar. The lower appellate court has observed the signature of the defendant on the Vakalatnama and his signature of the suit summons. However, the defendant has chosen to deny his signature on Exh.22(the agreement of sale), has also chose to deny his signature on the summons and also on the acknowledgment receipt at Exh.25. This has rightly weighed with the lower appellate court.

12. The lower appellate court has rightly criticised and differed from the view taken by the trial court in respect of Exh.28, which is a statement made by the plaintiff before the City Survey Officer. Firstly it must be appreciated that the plaintiff's statement made before the City Survey Officer is not on oath and secondly that the same is made only for fiscal purposes, and the purpose of making such a statement has no nexus with the relationship between the plaintiff and the defendant as landlord and tenant. This statement at Exh.28 contains a reference that the defendant was residing in the suit premises, and the rent was Rs.150/- per year. It may be that the entire object of making such a statement before the City Survey Officer was to reduce the tax liability by showing

a lesser figure of rent realised. However, this would not justify the view taken by the trial Court that in view of such a statement, either that there was no rent note or that the rent note was not proved. The only discrepancy is as regards the quantum of rent. Even Exh.26 asserts that the defendant was a tenant in respect of the suit premises. Thus, the lower appellate court has rightly differed from the trial court, and has refused to accept that the rent note Exh.23 is not proved.

13. In the premises aforesaid, on a collective appreciation of the evidence on record, the judgement and decree of the appellate court is required to be sustained. This revision is, therefore, dismissed. Rule is discharged with no order as to costs. Interim stay vacated.

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